

## EXHIBIT 12

COBA v. DOC, 49 OCB 40 (BCB 1992) [Decision No. B-40-92]

OFFICE OF COLLECTIVE BARGAINING  
BOARD OF COLLECTIVE BARGAINING

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In the Matter of

CORRECTION OFFICERS BENEVOLENT  
ASSOCIATION, INC.,

DECISION NO. B-40-92

DOCKET NO. BCB-1444-91

Petitioner,

-and-

DEPARTMENT OF CORRECTION OF THE  
CITY OF NEW YORK,

Respondent.

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DECISION AND ORDER

On December 20, 1991, the Correction Officers Benevolent Association ("COBA or "the Union") filed a scope of bargaining petition against the New York City Department of Correction ("the Department"). The petition alleges that the Department has refused to repair electronic security equipment in a yard area of the Manhattan Detention Complex, and also that it has refused to staff this yard area on a permanent basis, thereby creating a dangerous working condition. The Department, appearing by the New York City Office of Labor Relations ("the City"), filed its answer to the petition on January 24, 1992. The Union filed a reply on March 3, 1992.

A hearing was scheduled before a Trial Examiner designated by the Office of Collective Bargaining to allow the Union the opportunity to prove the allegations raised in its petition and disputed by the City in its answer. The hearing began on May 26, 1992, continued on May 27, and conditionally concluded on May 28, after the parties' representatives and the Trial Examiner made a physical inspection of the yard area at the facility on that afternoon. The Union reserved the right to reopen the hearing on June 8, 1992, if it chose to submit supplemental documentary evidence that it had not yet evaluated. On June 3, 1992, the parties notified the Trial Examiner that they both had concluded the presentations of their cases, and that the additional hearing day would not be necessary. The City and the Union agreed to file

Decision No. B-40-92  
Docket No. BCB-1444-91

2

post-hearing briefs on August 7, 1992. After two mutually requested extensions of time, the parties filed their briefs on August 25, 1992. Thereupon, the record was closed.

### Background and Facts

The Manhattan Detention Complex, formerly known as the Manhattan House of Detention for Men, occupies a two-block area on the lower east side of New York City. The complex consists of a North Tower and a South Tower, and is bounded by Baxter Street on the east and Centre Street on the west. White Street runs between the North Tower and the South Tower. The Manhattan Criminal Courts building is located south of the South Tower. An enclosed yard area lies between the South Tower and the Criminal Courts building. It is this yard area that is the focus of the Union's claims.

The yard is used to receive and transport both prisoners and institutional supplies on a twenty-four hour a day basis. It is protected by four sets of mechanical gates, two of which are on the Baxter Street side, and two on the Centre Street side. Generally, the Centre Street gates are used for vehicle entrance and the northern-most Baxter Street gate for vehicle exit. The southerly Baxter Street gate primarily is used by police to take prisoners directly into the courts building. An inner wall separates the south Baxter Street gate from the yard area.

The north Baxter Street gate and both Centre Street gates have two components. On the street side are solid metal roll-up barriers that descend mechanically from beneath an overhead bridge or traverse. The traverse is constructed of masonry and copper sheathing. The top of the traverse's parapet wall is approximately thirty feet above street level. The gates themselves are not unlike the familiar solid window guards frequently seen on storefronts throughout the city, although they are large enough to permit passage of a prisoner bus or delivery truck. Separating the outer gates from the yard area are inner gates made of flexible metal grillwork that also roll

Decision No. B-40-92  
Docket No. BCB-1444-91

3

up and descend mechanically. The inner gates are suspended from a steel beam. The Department designates the area between the inner and outer gates as the "sallyport."

The normal procedure for admitting a vehicle through the Centre Street gates is as follows: A vehicle pulls up to one of the outside gates. An armed correction officer observes the vehicle and its driver from inside the outer gate through a small transparent viewing port built into it. If admission is authorized, the officer walks to a control booth approximately fifty feet away between the inner and outer gates, and raises the outer solid gate by activating an electronic switch. At this point, the inner gate already is in the down position. The vehicle is driven into the sally port area between the two gates and the officer lowers the outer gate to its full extent. If the vehicle contains officers carrying firearms, the gate post officer secures their weapons in a locked gunbox in the booth. The inner gate is then raised, thereby allowing the vehicle to enter the yard area to complete its delivery.

A duplicate set of electronic controls are located in the South Tower's central control room, but are non-functional. Security cameras strategically placed to monitor the yard from the central control room also are non-functional.

Under the original design, correction officers manned the Centre Street gate post on an around-the-clock schedule. As an officer was finishing a shift, a relief officer from the oncoming shift would enter the yard from the South Tower after attending roll call, and replace the departing officer. The relief officer would assume possession of the departing officer's weapon during this exchange. Thus, there was no occasion for weapons to be left unattended, or to be taken into the South Tower facility, which would be a breach of departmental regulations.

Sometime around or before 1986, however, the Department decided to discontinue staffing the Centre Street gate post between the hours of 11:30

Decision No. B-40-92  
Docket No. BCB-1444-91

4

P.M. and 6:00 A.M., leaving the yard unmanned. One consequence of this staffing change is that when a vehicle needs access during the early morning hours, an officer has to be deployed to the post from elsewhere in the complex to operate the gates. This officer normally is unarmed. After securing the vehicle occupants' firearms in the gunbox in the booth, the officer admits the vehicle and returns to his or her post. A random review of institutional logs shows that this situation occurs up to six times per shift.

A second consequence of the staffing change is that members of the off-going evening shift are required to take their weapons back to the arsenal located in the North Tower since no one else is present in the yard area to take custody of them. Because institutional policy prohibits officers from bringing firearms into the South Tower, they must exit the yard through one of the Centre Street gates and walk along the sidewalk past the South Tower to the arsenal in the North Tower. To do so, an officer either has to wait for another officer to be deployed from elsewhere in the facility to operate the gate, or the officer can set the outer gate in a downward motion from the control booth and then run to the gate and duck underneath it as it is descending. Institutional Memorandum #5/89, dated January 31, 1989, meant for distribution to all personnel, bans the latter practice. The memorandum reads as follows:

To clarify this Command's Policy on Officers assigned to the Yard Posts, the following procedures will be adhered to:

1. Armed Correction Officers assigned to the Yard posts will enter and exit their posts from either Baxter or Centre Streets.
2. The carrying of firearms into [the South Tower] proper, while in route to the Yard, is absolutely prohibited.
3. The practice of staff walking under the Yard gates while they are in the process of closing, is prohibited.
4. Whenever it becomes necessary for an Armed Correction Officer to exit the Yard post, when no other staff is available to operate the Yard gate, the Officer will contact the Control Room Captain and request that a relief Officer be assigned temporarily, to operate the Yard gate.

Decision No. B-40-92  
Docket No. BCB-1444-91

5

5. The Control Room Captains will assign a relief Correction Officer to operate the Yard gates whenever it becomes necessary for an Armed Person to enter or exit the Yard.

According to the Union, the practice of correction officers running under the gate has continued, despite the prohibition contained in Institutional Memorandum #5/89. The Union also contends that the Department has not made accommodation sufficient to overcome the problem of operating the gates in a manner different from the way in which the system originally was designed to operate.

Decision No. B-40-92  
Docket No. BCB-1444-91

6

### The Union's Evidence

In support of its position, the Union presented two witnesses who testified on the staffing and operation of the gate posts in the yard area of the Manhattan Detention Complex.

Correction Officer Patrick Marcune has served at the complex for the past thirteen years. He also holds a union office as COBA's recording secretary. Officer Marcune began by describing the physical plant of the yard area. He said that in about 1985, the security cameras became non-operational and the controls that operated the mechanical gates from the central control room no longer worked. The following year the Department ceased staffing the gate posts during the midnight shift and also eliminated an outside perimeter security post. As a result, an officer must be reassigned temporarily from a post elsewhere in the facility to operate the gates during the early morning hours. In Officer Marcune's personal experience, he had been reassigned to the gate post from a fire watch post in the North Tower. Because the security cameras do not work, the unarmed officer who enters the yard is out of view and out of contact with the jail until he or she reaches the sally port booth, which has a telephone. Due to this lack of communication, according to the witness, "anyone wanting to gain access to the facility on the midnight [tour] would have no problem, just climb a little ten foot wall, there is no one to stop him."

Officer Marcune then recounted a dangerous incident in the yard involving a disturbance by about twenty inmates that happened approximately two years ago. He said that a prisoner van had entered the yard area during the midnight tour. The officer who operated the gates had returned to his primary detail elsewhere in the facility, and a second officer who had been riding in the van was in the receiving room picking up materials when the disturbance started. This left only a female correction officer on board the van with twenty unruly inmates. According to the witness, the female officer

Decision No. B-40-92  
Docket No. BCB-1444-91

7

felt threatened and had to take immediate action. Having no direct communication with anyone in the complex, her only alternative was to radio the Transportation Division on Rikers Island for help. The Transportation Division, in turn, notified the tour commander in the South Tower via telephone that there was an inmate disturbance in the yard. Only then could the tour commander get assistance to her. According to the witness, prisoner vans can hold up to twenty-five inmates. They generally are handcuffed in pairs, but the pairs are not chained together.

Officer Marcune's testimony then turned to the problem of relief encountered by officers assigned to the 3:00 P.M. to 11:00 P.M. shift. He acknowledged the existence of the Institutional Memorandum prohibiting personnel from running out underneath the Centre Street gates, and early in his testimony the witness said that the practice has stopped. Later, however, he said that correction officers have been running under the gate "every day." He claimed that officers have disregarded the order because when they follow the order and wait for relief, which arrives past the end of their tour, the Department refuses to pay them overtime. According to Officer Marcune, it is "now incumbent" upon correction officers to start the gate with a down motion and run out of the yard.

Correction Officer Howie Figueroa, who holds elective position as COBA's Legislative Chairman, was the Union's second witness. He stated that besides his seasonal legislative duties, he deals mainly with contract enforcement.

Officer Figueroa said that he became aware of the Centre Street gate post problem sometime in 1989 or 1990, when there was a complaint about overtime. He claimed that when correction officers assigned to the post had followed the order of the institution, which was to wait for relief, they did not receive overtime. As a result, according to the witness, officers began to run under the gate despite the departmental order prohibiting the practice: "The officers weren't willing to sit there and wait for relief and not get paid for overtime that they would incur. . . . The officer violates the rule



Decision No. B-40-92  
Docket No. BCB-1444-91

8

because he wants to go home." Furthermore, according to Officer Figueroa, the Department is aware of this practice and has done nothing to deter it. When asked whether the grievance was resolved, he said, "It really wasn't resolved. It somewhat just went away."

### The City's Evidence

The City called one witness to respond to the Union's allegations. John Nichols is an Assistant Deputy Warden at the Manhattan Detention Complex. He works under the Deputy Warden of Security and is responsible for security matters within the facility.

Warden Nichols confirmed that the Center Street and Baxter Street gate posts are unmanned during the midnight shift. He explained that the proper procedure for gate post officers to follow at 11:00 P.M. when going off duty is to notify the control room that they are ready to be relieved. The control room captain then is supposed to assign an officer to the yard to make the relief. Warden Nichols said that this procedure has been in effect since 1989. He expressed surprise that officers were running out under the gate as it was descending. According to the witness, such a practice would violate departmental policy. He said that "the first time it came to my knowledge was yesterday at this hearing."

Warden Nichols acknowledged that security cameras covering the yard area have been out of service for three years or more, and that the gate controls in the central control room do not work. In his opinion, however, they would be of little value even if they were operable. He explained that it would be very difficult for an officer inside the control room to verify someone's identification via a small monitor screen and decide whether to admit that person into the yard. He termed this idea a "security nightmare." Discussing Officer Marcune's testimony of the incident involving the lone female correction officer who felt that she was in danger, Warden Nichols said that there is an intercom near the control room door that she could have used to

Decision No. B-40-92  
Docket No. BCB-1444-91

9

make direct contact with the facility as an alternative to using the radio in the van.

### Positions of the Parties

#### The Union's Position

The Union claims to have shown that the Department's failure to repair the electronic system for centrally operating and monitoring the Manhattan Detention Complex's perimeter security gates or to restore staffing at the gate posts during the midnight tour has resulted in a practical impact on employees' safety. The Union points out that the parties do not dispute that the electronic monitoring and gate control systems installed in the South Tower's central control room are inoperable. It contends, however, that despite the accommodations that it has tried, the Department has not been able to overcome these equipment deficiencies.

According to the Union, the fire watch officer is the person usually dispatched to operate the gates during the midnight shift as the need arises. It maintains that this practice poses several dangers: it endangers the fire watch officer, who must enter the yard alone, unarmed and unmonitored; it endangers the rest of the institution, should a fire occur while the fire watch officer is off post operating the gates; and it endangers officers on prisoner transport vehicles, who encounter long delays while attempting to enter or exit the yard and are sometimes left alone and unmonitored with large numbers of prisoners. Furthermore, according to the Union, the absence of a relief officer during the midnight shift has encouraged off-going evening shift officers to flout the rules by running under the gate as it is descending.

The Union concludes that it has met its burden of proof demonstrating the existence of practical impact on employees safety, and that the steps taken by the Department to eliminate the safety impact are inadequate.

Decision No. B-40-92  
Docket No. BCB-1444-91

10

### The City's Position

The City denies the existence of a practical impact on the safety of correction officers manning the gate posts or transporting inmates to and from the Manhattan Detention Complex. Instead, it claims that the Union is trying to force the City to bargain over the equipment used to operate the mechanical security gates and on the staffing of the gate posts. These matters, it contends, fall within management's statutory prerogatives and are nonmandatory.

The City agrees that, at one time, the Department used an electronic monitoring and central control system located in the South Tower's control room to help maintain yard security. It argues, however, that since November of 1984, which was prior to the breakdown of central control system, there have been no officers assigned to gate posts during the midnight tour. The only difference since then has been the elimination of the perimeter foot patrol on the sidewalk outside the complex. According to the City, this change was minor, and was not shown to have an impact on the operation of the yard area or on the safety of officers assigned to the gate post. Moreover, to the extent that any safety impact did exist, it argues that the Department has taken steps to alleviate the impact by reissuing institutional post orders in April and May of 1992 that assure the presence of an officer when the mechanical security gates are in use. Finally, the City contends that the incident involving the female correction officer and the unruly inmates described by Officer Marcune took place in the street rather than in the yard, and it occurred before the gate post orders were reissued.

With respect to officers running under the Centre Street gate as it descends, the City notes that the Union is concerned that officers might trip and fall, and that the gate could crush them. It also notes that the Union justifies the practice by claiming that the Department allegedly refuses to pay overtime. The City points out, however, that in these circumstances, any safety impact that might result is not due to managerial action or inaction.

Decision No. B-40-92  
Docket No. BCB-1444-91

11

Instead, it is a "defiant response" to management's order that expressly prohibits staff from walking under the yard gates while they are in the process of closing. The City argues that it can only insure the safety of its employees if they abide by the method, rules and procedures that management implements to protect them. It also argues that the officers involved did not make a request for overtime, and that the grievance referred to by Officer Figueroa was dismissed due to lack of evidence.

Finally, the City contends that in the event that this Board determines that management's action or inaction has caused a practical impact on the safety of correction officers, the Department has the right to take whatever action is necessary to alleviate the impact unilaterally. It maintains that the duty to bargain attaches only if management fails to alleviate the impact.

#### DISCUSSION

Before reaching the merits of the Union's claim, we find it necessary to denote the scope of our decision. Both parties have attempted to interject collateral issues into this case. The Union now argues that when a fire watch officer is off post operating the sally port gates, the rest of the institution is endangered, should a fire occur. We do not know whether such a possibility exists, because COBA's petition only asked us to consider alleged staffing and equipment problems pertaining to mechanical gates in an outside yard area. The petition made no mention of the fire watch post, and thus neither the City nor we had the chance to evaluate it thoroughly. The City, for its part, has tried to bolster its defense by referring to procedures that control the operation of the south Baxter Street police gate. These procedures apply to the transfer of prisoners from police vehicles directly into the criminal courts building through a passageway separated from the yard by a wall. Although they may be completely adequate and safe, they involve different personnel using a different gate, and have nothing to do with the operation of the gates on the Centre Street side of the yard.

Decision No. B-40-92  
Docket No. BCB-1444-91

12

The parties' pleadings, the testimony of their witnesses, and other evidence, have identified two potential safety concerns that do fall squarely within the scope of this proceeding: First, that the evening Centre Street gate post officer, at the end of the tour, is "compelled" to operate the outer mechanical gate alone while ducking under it as it descends. Second, that several safety hazards are associated with the temporary deployment of officers to operate the Centre Street gates during the midnight shift. These hazards include the problem of sending unarmed officers to man a security post in apparent contravention of departmental regulations that call for such officers to be armed; leaving prisoner transport officers unmonitored in the yard with prisoners, sometimes with a single officer guarding many prisoners; and leaving firearms unattended in the locked gunbox in the gate post booth. Although these safety concerns all stem from the elimination of the gate post officers during the midnight tour, the running under the descending gate claim, and the temporary deployment of officers to cover the gate post during the midnight tour claim, are mutually exclusive issues that we shall examine independently.

#### Running Under the Descending Gate

Both parties recognize that Section 12-307b. of the New York City Collective Bargaining Law ("NYCCBL") reserves to management certain rights, including the right to determine the methods and means by which it conducts its operations.<sup>1</sup> In the exercise of this right, the Department of Correction

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<sup>1</sup> Section 12-307b. of the NYCCBL provides, in relevant part, as follows:

b. It is the right of the city, or any other public employer, acting through its agencies, to... maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted;... and exercise complete control and discretion over its organization and the technology of performing its work.

Decision No. B-40-92  
Docket No. BCB-1444-91

13

promulgated Institutional Memorandum #5/89, which sets out the procedures that officers assigned to the yard posts are to follow. However, when an employer promulgates an order in the exercise of its managerial prerogative, this section of the NYCCBL also

Decision No. B-40-92  
Docket No. BCB-1444-91

14

recognizes that a practical impact on matters of employment, including matters of employee safety, may result.<sup>2</sup> Thus, under the practical impact provision of NYCCBL §12-307b., the Union could secure bargaining if it satisfies its burden of proving that one or more aspects of Memorandum #5/89 create a practical impact on employees' safety.

The Union argues that the Department is forcing correction officers to disregard the prohibitions contained in the memorandum and that officers are "compelled" to flout the rules by running under the gate. The evidence the Union gives to support the existence of this "compulsion" is that management does not provide timely relief for the gate post officer at the end of the 3:00 P.M. to 11:00 P.M. tour, that the Department allegedly refuses to pay overtime when the off-going officer is held beyond the normal relief time, and that officers are unwilling to wait for relief because they want to go home. Institutional Memorandum #5/89 is explicit: no officer will walk under the yard gates while they are closing. In our judgment,

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<sup>2</sup> NYCCBL §12-307b. further provides that:  
Decisions of the city or any other public employer on those matters are not within the scope of collective bargaining, but, notwithstanding the above, questions concerning the practical impact that decisions on the above matters have on employees, such as questions of workload or manning, are within the scope of collective bargaining.

Decision No. B-40-92  
Docket No. BCB-1444-91

15

none of the reasons advanced by the Union are adequate to prove that the Department has created an unsafe condition by forcing the memorandum to be ignored. To the contrary, management has promulgated a reasonable work rule designed to avoid risk of injury to officers operating the yard gates. It cannot protect against injury if the officers refuse to abide by the rule.

Further, we note that Article III, Section 1. of the parties' collective bargaining agreement provides:

All ordered and/or authorized overtime in excess of forty (40) hours in any week or in excess of the hours required of an employee by reason of his regular duty chart if a week's measurement is not appropriate, whether of an emergency nature or of a non-emergency nature, shall be compensated for either by cash payment or compensatory time off, at the rate of time and one-half, at the sole option of the employee. Such cash payments or compensatory time off shall be computed on the basis of fifteen (15) minute segments.

Thus, the parties seem to have reached a contractual agreement on overtime entitlement and compensation. If the Department keeps the evening shift gate post officers beyond their normal hours and then refuses to pay overtime, the grievance and arbitration procedure is the appropriate means for seeking relief. Union testimony discloses that COBA did, in fact, begin to use this process "in 1989 or in 1990," but the grievance "somewhat just went away." If there is a residual overtime deprivation dispute, a safety impact claim is not the way to resolve it.



Decision No. B-40-92  
Docket No. BCB-1444-91

16

Temporary Deployment of Unarmed Officers to a Security Post

Institutional Order No. D6.2.0, in effect since November 15, 1984, pertains to security and yard control at the Centre Street sally port. Its procedures section requires that "[t]he officer assigned to the Centre Street Gate Post on the 0630 to 1501 hours tour" and on the "1430 to 2301 hours tour" shall obtain the following departmental equipment from the facility arsenal:

- a. one (1) .38 caliber Smith & Wesson revolver
- b. six (6) rounds of ammunition
- c. one (1) belt with holster
- d. one (1) two-way radio
- e. one (1) personal body alarm
- f. Centre Street Gate key ring.

It is unclear whether an officer temporarily deployed to the gate post during the midnight tour carries a body alarm. However, Officer Marcune's testimony that the temporary officer carries neither a firearm nor a two-way radio is uncontroverted. Also uncontroverted is the fact that the officer's movements are unmonitored, inasmuch as the yard security cameras are non-functional. This stands in stark contrast to security concerns expressed by the Department during the other two shifts when there are at least two armed officers in the yard at all times with redundant means of communication.

With regard to this aspect of the Union's claim, we find that COBA has met its burden of proving the existence of several hazards to employee safety, the first of which we have already described: sending an unarmed, unmonitored correction officer into an empty yard during the midnight shift with no means of communication until he or she reaches the sally port booth. We make no judgment on the Union's assertion that a "terrorist" or other intruder could scale the outside thirty foot wall and lie in wait to ambush the officer. Rather, we base our finding on the dichotomy between the rigorous safety procedures that the Department has seen fit to implement for day shift and evening shift officers assigned to the gate post, yet inexplicably abandons when it deploys officers to the gate post temporarily during the midnight

Decision No. B-40-92  
Docket No. BCB-1444-91

17

shift.<sup>3</sup> We also note that the Department apparently was sufficiently concerned about monitoring the yard that it installed security cameras, but then permitted the equipment to become inoperable.

Secondly, we find that the practice of leaving unmonitored transportation officers alone in the yard with prisoners to be a legitimate safety concern. Guarding incarcerated and about-to-be incarcerated prisoners is inherently dangerous work. In the event of an outbreak of violence, if an officer cannot reach the South Tower intercom, he or she must rely on a radio transmission to Rikers Island and a telephone call from Rikers Island back to the facility. While we do not agree with the Union that this technique automatically creates appreciable delay, we recognize that a two step communication relay doubles the risk that the chain will be interrupted during an emergency.

Finally, we note that while Institution Order No. D6.2.0 provides elaborate safeguards for securing firearms in the Centre Street sally port booth while it is manned, the order makes no provision for the secure storage of firearms when an officer is not in the immediate vicinity of the gate post. In these circumstances, we find that the practice of leaving firearms unattended and unmonitored in the sally port booth while prisoners are in the yard during the midnight shift also raises a serious safety concern. While the possibility of someone scaling the outside wall may be remote, the inner gate is a different matter. It hangs from a steel beam approximately fourteen feet off the ground. Because of its grillwork structure, it could be scaled, either by an unsecured prisoner or by a person who had gained surreptitious entry into the yard. Once in the sally port, the booth could be broken into

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<sup>3</sup> See Institutional Order No. D6.2.0, which requires armed correction officers to "maintain strict security for the Centre Street sallyport area," and to "search all vehicles for contraband or secreted inmates. This search shall include, but not be limited to, passenger(s), trunk, engine and cargo compartments. The undercarriage of the vehicle shall also be inspected."

Decision No. B-40-92  
Docket No. BCB-1444-91

18

with an ordinary implement such as a tire iron or pry bar. Likewise, the gun boxes, although constructed of steel plate and locked, could be forcibly opened.

Therefore, upon careful consideration of the hearing record, together with the pleadings and the exhibits submitted herein, we find that the Union has met its burden of establishing parts of its claim, as set forth above. The record shows that there are elements of danger associated with the operation of the Centre Street gate post during the midnight tour of duty that the Department has not addressed adequately. We agree that, because of these inadequacies, a practical impact on the safety of correction officers has resulted. Accordingly, we will order that the Union be given an opportunity to bargain over the means to be used and the steps to be taken to alleviate the safety impact.

We will not, as the City suggests, delay the bargaining order to give the Department the opportunity to alleviate the impact unilaterally. Unlike the situation in other kinds of practical impact cases that do not involve safety issues, once we find that a safety impact exists, the duty to bargain over alleviation arises immediately. We reiterated this point in Decision No. B-25-91, where we went to great length to review the development of the concept of practical impact on safety under the NYCCBL. In our discussion of that case, we said:

THREATS TO EMPLOYEE SAFETY - We have also recognized that a finding of practical impact may attach to the exercise of a management prerogative if the exercise of such prerogative results in a threat to employee safety. Whether a threat to safety would result from the employer's exercise of its management right may be a question of fact to be decided by this Board after a hearing is held and a record developed. In cases where we determine that management's exercise of its prerogative would in fact result in a threat to

Decision No. B-40-92  
Docket No. BCB-1444-91

19

safety we will require bargaining to alleviate the impact at the time when implementation of the managerial decision is proposed.<sup>4</sup>

If anything, in a case where managerial action has been implemented rather than proposed, there exists a greater urgency that the parties bargain immediately to alleviate the safety impact.<sup>5</sup>

#### ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

DETERMINED, that the manning practices established by the Department of Correction with respect to the Centre Street gate post at the Manhattan Detention Complex is a proper exercise of reserved managerial authority, as defined in Section 12-307b. of the New York City Collective Bargaining Law except as set forth below; but it is further

DETERMINED, that the elimination of the gate post during the

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<sup>4</sup> Citing Decision No. B-41-80.

<sup>5</sup> This is in full accord with our long-standing policy on bargainability of safety impact matters. See, for example, Decision No. B-6-79, where we ordered prompt negotiations to alleviate specific safety impact items resulting from the Police Department's decision to implement solo patrols for its sergeants and lieutenants.

Decision No. B-40-92  
Docket No. BCB-1444-91

20

midnight tour of duty and the non-functioning of central security equipment has a practical impact on the safety of Correction Officers, and, therefore, the alleviation of such practical impact on employees' safety is a matter within the scope of collective bargaining; and it is accordingly

ORDERED that, the Department of Correction shall bargain in good faith concerning the means to be used and the steps to be taken to alleviate the practical impact on the safety of its employees.

DATED: New York, N.Y.  
September 30, 1992

MALCOLM D. MACDONALD  
CHAIRMAN

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